

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 14 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?

No

STATE OF GUJARAT

Versus

KANJIBHAI BIJALBHAI

Appearance:

Shri S.R. Divetia, Addl. Public Prosecutor, for
the Appellant-State

Shri Vivek Barot, Advocate, for the
Respondent-Accused

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 20/01/97

ORAL JUDGEMENT

The judgment and order of acquittal passed by the learned Judicial Magistrate (First Class) at Viramgam on 6th October 1989 in Criminal Case No. 1766 of 1986 is

under challenge in this appeal after obtaining leave of this Court under sec. 378 of the Code of Criminal Procedure, 1973 (the Cr.P.C. for brief). Thereby the learned trial Magistrate acquitted the respondent-accused of the offences punishable under sections 323, 506 and 504 of the Indian Penal Code, 1860 (the I.P.C. for brief) and under sec. 7 of the Protection of Civil Rights Act, 1955 (the Act for brief).

2. The facts giving rise to this appeal move in a narrow compass. One Chamanbhai Shankarbhai residing at Jethapur lodged his complaint with the police on 13th October 1986 of the incident stated to have occurred at about 8.30 p.m. on 12th October 1986. According to the complainant, he had been to attend the 'mandvi' function of their Goddess at about 8.30 p.m. on the previous day and the respondent herein beat him and gave him threat of life and also called him names by his caste name. The police appears to have recorded his complaint at about 6.15 p.m. on 13th October 1986. It was sent for investigation. On completion of investigation, the charge-sheet was submitted in the court of the Judicial Magistrate (First Class) at Viramgam charging the respondent-accused with the offences punishable under sec. 323, 504 and 506 Part 2 of the IPC. It came to be registered as Criminal Case No. 1766 of 1986. The charge against the respondent-accused was framed on 19th June 1987 at Ex. 2 on the record of the trial. Thereafter certain witnesses were examined. It appears that an application was made for adding the charge of the offence punishable under sec. 7 of the Act. That application appears to have been taken on record as Ex. 15. By an order passed therebelow, the charge came to be amended on 17th February 1988 and the respondent-accused was also charged with the offence punishable under sec. 7 of the Act. His plea with respect to the earlier charge was recorded on 19th June 1987. He did not plead guilty to the charge. His plea with respect to the amended charge was recorded on 17th February 1988. Again he did not plead guilty to the charge. Thereupon he was tried. After recording the prosecution evidence and after recording the further statement of the respondent-accused and after hearing arguments, by his judgment and order passed on 6th October 1989 in Criminal Case No. 1766 of 1989, the learned Judicial Magistrate (First Class) at Viramgam acquitted the respondent-accused of the charge levelled against him. That aggrieved the prosecution agency. The State Government has thereupon invoked the appellate jurisdiction of this Court by means of this appeal after obtaining its leave for questioning the correctness of

the aforesaid judgment and order of acquittal passed by the learned trial Magistrate.

3. Learned Additional Public Prosecutor Shri Divetia for the appellant-State has taken me through the entire evidence on record in support of his submission that, in view of the overwhelming evidence on record, the learned trial Magistrate ought to have come to the conclusion that the guilt of the respondent-accused was proved beyond any reasonable doubt. As against this, learned Advocate Shri Barot for the respondent-accused has submitted that the learned trial Magistrate has carefully examined and appreciated the evidence on record and has come to the conclusion that the case against the respondent-accused was not proved beyond any reasonable doubt. It has further been urged by learned Advocate Shri Barot for the respondent-accused that the view taken by the learned trial Magistrate is a possible view and, in view of well-settled principles of law governing acquittal appeals, this Court need not interfere with the impugned judgment and order of acquittal in this appeal.

4. As rightly observed by the learned trial Magistrate, the foremost defect in the complaint at Ex. 10 on the record of the case is absence of its date. As observed by the learned trial Magistrate, the complainant in his oral testimony at Ex. 9 has clearly stated that he carried the original complaint to the police but it was not properly written and that is how another complaint was written. The first draft complaint has not been brought on record. The complaint at Ex. 10 on the record of the case does not mention any date of preparing it nor does it mention the date of the incident. What is mentioned is that the incident occurred on the previous day.

5. It may however be noted that the first information report shows that the complaint was lodged with the police on 13th October 1986 at about 6.15 p.m. In that view of the matter, the incident could be stated to have occurred on 12th October 1986. There was thus delay of more than 20 hours in lodging the complaint. This delay on the part of the complainant has not come to be explained by or on behalf of the prosecution in any manner. The learned trial Magistrate has rightly found the delay of more than 20 hours in lodging the complaint to be fatal to the prosecution case in absence of any explanation whatsoever for such delay.

6. The learned trial Magistrate has observed that, though the material on record showed and suggested that

the incident is alleged to have occurred in presence of so many people, only interested witnesses were examined at trial and no independent witness was examined. The complainant was obviously an interested person. The other persons examined at trial were his own mother and his first cousin. They have not been cited as witnesses in the complaint. They can very well be said to be interested witnesses. The learned trial Magistrate has rightly insisted on corroboration of the testimony of the interested witnesses including that of the complainant in view of the material on record indicating presence of several persons at the time of occurrence of the incident.

7. Besides, the learned trial Magistrate did find certain material contradictions in the oral testimonies of the witnesses examined to support the prosecution case. According to the complainant at Ex. 9, the incident occurred during the 8th day of the Navratri festival. According to his mother at Ex. 13, the incident occurred on the 9th day of Navratri. His cousin in his oral testimony at Ex. 12 has stated that the incident occurred on the day of Dussehra, that is, on completion of the Navratri festival. As observed earlier, the complaint is silent as to the day on which the incident occurred. In view of this evidence on record, the learned trial Magistrate has rightly observed that the exact day of occurrence of the incident was shrouded in mystery.

8. The learned trial Magistrate has rightly doubted the presence of the complainant's mother at the time of occurrence of the incident in question. Though in her oral testimony at Ex. 13 she has asserted that she did not say in her police statement that she went to the place of the incident only on information received regarding beating of her son by the respondent-accused, the investigating officer in his oral testimony has pointed out the contradictory say in her police statement. If she had reached the place of incident only on receiving information regarding beating of her son by someone, she could not be an eye witness thereto. The learned trial Magistrate has therefore rightly doubted her presence at the time of the incident in question.

9. The only other witness is found to be inimical to the respondent-accused. He also could be said to be an interested witness. Again, all the three witnesses examined to corroborate the complainant's testimony have made material contradictions of omission in their police statement regarding actual beating of the complainant by

the respondent-accused. In that view of the matter, the learned trial Magistrate has rightly doubted the occurrence of the incident in question as stated by all such witnesses.

10. In view of my aforesaid discussion, I am of the opinion that the learned trial Magistrate was right in his conclusion that the prosecution could not bring the guilt home to the respondent-accused beyond any reasonable doubt. The view taken by the learned trial Magistrate is a possible view and, according to well-settled principles governing acquittal appeals, the impugned judgment and order of acquittal calls for no interference by this Court in this appeal.

11. In the result, this appeal fails. It is hereby dismissed.
